

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

EDNA DURANT,
Plaintiff

Case No. 1:02-cv-419

vs

SUMMIT BEHAVIORAL
HEALTHCARE SYSTEM,
Defendant

**ORDER DENYING MOTION TO
PROCEED ON APPEAL *IN FORMA
PAUPERIS***
(Perelman, M.J.)(Consent case)

This matter is before the Court on plaintiff's motion for leave to proceed *in forma pauperis* on appeal. (Doc. 38). Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." *See also* Fed. R. App. P. 24(a). Good faith in this context is demonstrated when the party seeks appellate review of an issue that is not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is frivolous where the appeal lacks an arguable basis either in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

On October 3, 2003, the Court granted defendant's motion for summary judgment. (Doc. 36). The Court found plaintiff failed to meet her burden of proving a prima facie case of discrimination because she failed to show she suffered an adverse employment action for the purposes of Title VII. (Doc. 36). For the reasons stated in the Court's Order of October 3, 2003, any *in forma pauperis* appeal from the dismissal of this action would be frivolous and not taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3). Therefore, plaintiff's motion for leave to proceed *in forma pauperis* on appeal (Doc. 38) is **DENIED**.

Pursuant to Fed. R. App. P. 24(a)(4), plaintiff may file, within thirty (30) days after service of this Order, a motion with the Sixth Circuit Court of Appeals for leave to proceed as a pauper on appeal. *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), *overruling in part Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997). Plaintiff's motion must include a copy of the affidavit filed in the District Court and this Court's statement as to the reasons for denying pauper status on appeal. *Id.*; see Fed. R. App. P. 24(a)(5).

Plaintiff is notified that if she does not file a motion within thirty (30) days of receiving notice of the District Court's decision as required by Fed. R. App. P. 24(a)(5), or fails to pay the required filing fee of \$255.00 within this same time period, the appeal will be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804. Once dismissed for want of prosecution, the appeal will not be reinstated, even if the filing fee or motion for pauper status is subsequently tendered, unless plaintiff can demonstrate that she did not receive notice of the District Court's decision within the time period prescribed for by Fed. R. App. P. 24(a)(5). *Id.*

IT IS SO ORDERED.

Date 1/26/2004

s/David S. Perelman
David S. Perelman
United States Magistrate Judge